

REMARKS

This Response is responsive to the Final Office Action mailed June 2, 2003. In that action: Claims 1-19 were pending; the rejection of Claims 1-19 from the previous Office action was maintained, those previous rejections being: Claims 1-7 and 9 were rejected under 35 U.S.C. § 102(e) as being anticipated by Eyal (U.S. Patent No. 6,389,467); Claims 8, 10-12 and 14-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Eyal in view of Martino (U.S. Patent No. 5,987,103); and Claim 13 was rejected under Section 103(a) as being unpatentable over Eyal in view of Martino and Suzuki (U.S. Patent No. 6,470,356).

Claims 1-7 and 9 have been rejected as anticipated by Eyal. Eyal appears to disclose a streaming media search and continuous playback system, in which the system collects network addresses based on search criteria and plays back media resources located at some of the selected addresses in an automatic fashion.

The Final Office action relies primarily on a section in the Eyal reference located at column 2, line 43 through column 3, line 9 for disclosure of the limitations of “compiling a download schedule” and “a file download device, which based on the download schedule, automatically accesses” A rejection of these claims based on Eyal is made under 35 U.S.C. § 102(e). The Eyal patent issued on May 14, 2002, having been filed on May 2, 2000, and relying for priority on U.S. Provisional Patent Application No. 60/177,786, filed on January 24, 2000. The present application was filed on March 2, 2000 (in between the 2 Eyal filings) so the teachings located in the Eyal patent can only possibly qualify as an anticipation if they are located in the provisional patent application. In other words, material that first appeared in the non-provisional application filed on May 2, 2000 cannot be utilized in a §102(e) rejection of the present invention.

A copy of U.S. Provisional Patent Application No. 60/177,786 has been obtained and the specification has been compared to the specification of the Eyal patent (U.S. Patent No. 6,389,467). It appears that the entire Summary of the Invention section running from column 1, line 51 through column 8, line 43 does not appear in the provisional application. In addition, the following paragraphs in the Eyal patent could not be found in the provisional application: the last two paragraphs beginning in column 10, the first three paragraphs and paragraphs 5 and 6 in column 11, all of the new paragraphs in columns 18 and 19, all but the last paragraph beginning in column 20, all but the fifth and sixth new paragraphs in column 21, the fifth paragraph in column 22, all but the first, third, and fifth paragraphs in column 32, all of columns 33-37, and the first new paragraph in column 38. Of course, none of the claims in the Eyal patent are found in the provisional patent application either.

As can be appreciated, the primary portion of the Eyal reference relied upon by the Examiner to reject Claims 1-7 and 9 is not available as an anticipatory teaching since it is not in the provisional application. Numbered paragraph 4 on pages 2 and 3 of the Final Office Action does state that "this limitation and others that are listed in the claims that are rejected by Eyal are further pointed out in the following sections." Of the following sections that are listed, only one appears in the provisional application. This is the section described in the Final Office Action as column 15, line 17 through column 16, line 54. This section does appear to be in the provisional application. It is respectfully believed, however, that this section does not anticipate the rejected claims. There is no selection interface which is configured to receive and process selections for compiling a download schedule, nor is there a file download device, which based on the download schedule, automatically accesses the remote site and downloads the selected multimedia file. There is also no disclosure in the provisional application of the limitation the Examiner points to in columns 2 and 3 of the patent of the network interface signaling a request

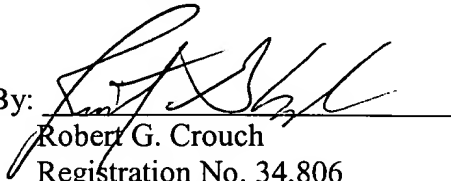
to a network service module and receiving addresses that match the search request. For all these reasons, it is respectfully submitted that Claims 1-7 and 9, and all claims dependent thereon (including Claim 8) are patentable.

Claim 10 has been rejected as obvious in light of a combination of Eyal and Martino. Since Claim 10 has somewhat similar limitations ("compiling a download schedule based on the received inputs, wherein the scheduling includes a description of the multimedia files selected, day and time for download, and download information" and "based on the inputs received through the interface, accessing and downloading over the data network, the selected multimedia files from selected remote sites"), and since neither Martino nor the provisional application upon which the Eyal patent is based contain such teaching, it is respectfully submitted that Claim 10 and all claims dependent thereon (including Claims 11-19) are patentable.

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

MARSH FISCHMANN & BREYFOGLE LLP

By: 

Robert G. Crouch
Registration No. 34,806
3151 South Vaughn Way, Suite 411
Aurora, Colorado 80014
(720) 562-5506

Date: August 1, 2003